

JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT

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In re  
CHARGE OF JUDICIAL MISCONDUCT

No. 91-8500  
Memorandum and Order

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Before: Chief Judge James L. Oakes  
Circuit Judges Thomas J. Meskill  
Jon O. Newman  
Amalya L. Kearse  
Richard J. Cardamone  
Ralph K. Winter  
George C. Pratt  
Chief Judges Charles L. Brieant  
Thomas C. Platt  
Michael A. Telesca  
Franklin S. Billings, Jr.  
Ellen Bree Burns  
Neal P. McCurn

On January 4, 1991, the complainant filed a complaint pursuant to 28 U.S.C. § 372(c) and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (Local Rules), making allegations of improper conduct against a Bankruptcy Judge of the Southern District of New York (the "Judge"). The initial complaint consisted of the complaint form adopted pursuant to the Local Rules, a typed statement of facts, and exhibits.

By orders dated January 23, 1991 and April 29, 1991, Chief Judge James L. Oakes appointed a Special Committee (Committee) pursuant to 28 U.S.C. § 372(c)(4) and Rule 9 of the Local Rules, and notified both the complainant and the judge of its formation. In addition to the Chief Judge, the Committee includes Circuit Judges Amalya L. Kearse and George C. Pratt, Eastern District Judge Eugene H. Nickerson and District of Connecticut Judge Alan H. Nevas.

The Judicial Council of the Second Circuit has received a comprehensive written report from the above Committee.

The complaint concerns the Judge's testimony in a case over which complainant, himself a former Bankruptcy Judge, presided during his judicial tenure. The testimony was by the Judge after

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he was appointed to the bench but it pertained to matters in a bankruptcy proceeding when he was a United States Trustee.

The question presented by the complaint is whether the charge that the Judge committed perjury is an allegation that he "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" within the meaning of section 372(c)(1). The Judicial Council agrees with the conclusion of the Committee that in the circumstances alleged by the complaint, the alleged perjury is beyond the scope of the Act. The testimony alleged to be false does not concern any aspect of the Judge's judicial duties or any aspect of his conduct during his tenure as a judge. It concerns solely matters occurring before he became a judge. As such, it is beyond the scope of the Act, for the reasons fully explained by then-Chief Judge Browning in In re Charge of Judicial Misconduct, No. 83-8037 (9th Cir. Mar. 5, 1986). We need not decide in this matter whether we would go as far as Judge Browning in disclaiming jurisdiction under the Act. Perjury is an extremely sensitive problem for the judicial system, but an allegation that a judge gave perjurious testimony in a matter unrelated to his own judicial duties and unrelated to activities occurring while he is a judge falls outside the statute authorizing disciplinary action.

Accordingly, the complaint is hereby dismissed in its entirety as outside the scope of the Act, pursuant to 28 U.S.C. § 372(c)(6)(B)(vii) and Rule 14(c)(1) of the Local Rules.

So Ordered.

  
Steven Flanders, Secretary  
of the Judicial Council

Dated: October 3, 1991  
New York, New York

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JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT

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In re  
CHARGE OF JUDICIAL MISCONDUCT

No. 89-8521  
Memorandum and Order

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Before: Chief Judge James L. Oakes  
Circuit Judges Wilfred Feinberg  
Thomas J. Meskill  
Jon O. Newman  
Amalya L. Kearse  
Richard J. Cardamone  
Ralph K. Winter  
George C. Pratt  
Roger J. Miner  
Frank X. Altimari  
J. Daniel Mahoney  
John M. Walker, Jr.  
Joseph M. McLaughlin  
Chief Judges Charles L. Brieant  
Thomas C. Platt  
Michael A. Telesca  
Franklin S. Billings, Jr.  
Ellen Bree Burns  
Neal P. McCurn

On November 21, 1989, Edna Paczynski (complainant), filed a complaint pursuant to 28 U.S.C. § 372(c) and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (Local Rules), making numerous allegations of improper conduct against District Judge John T. Elfvin, a judge of the Western District of New York (judge). The initial complaint consisted of the complaint form adopted pursuant to the Local Rules, a typed statement of facts, and several exhibits.

By order dated December 19, 1989, Chief Judge James L. Oakes appointed a Special Committee (Committee) pursuant to 28 U.S.C. § 372(c)(4) and Rule 9 of the Local Rules, and notified both the complainant and the judge of its formation. In addition to himself, the Committee includes Circuit Judges Richard J. Cardamone and Roger J. Miner, Southern District of New York Judge John F. Keenan, and District of Connecticut Judge Robert C. Zampano.

The Judicial Council of the Second Circuit has received a comprehensive written report from the above Committee, which report was based upon a thorough examination of relevant papers, letter responses and exhibits submitted by the judge, sworn statements taken in Buffalo, New York on March 14 and 15, 1990 from the Clerk, the Chief Deputy Clerk, a court reporter, and an Assistant United States Attorney for the Western District of New York, and the testimony of the complainant and the judge, respectively, taken at hearings held before the Committee on February 22, 1990 and May 21, 1990. Both complainant and the judge were represented by counsel at the February 22, 1990 hearing. The judge appeared pro se on May 21, 1990.

The Judicial Council agrees with the conclusion of the Special Committee that, although most of complainant's allegations are unsupported or may otherwise be dismissed under the Act, the judge did engage in certain behavior which had the potential of being prejudicial to the effective and expeditious administration of the business of the courts, but did not have such effect. Moreover, the Council is not unmindful that during the pendency of this complaint the judge has demonstrated his ability to fulfill the duties of his office, has sought medical advice on whether his behavior may have been influenced by the synergistic effect of a prescription medication and alcohol, and, has volunteered his pledge to abide by his physician's recommendation that he abstain from alcohol consumption for the indefinite future.

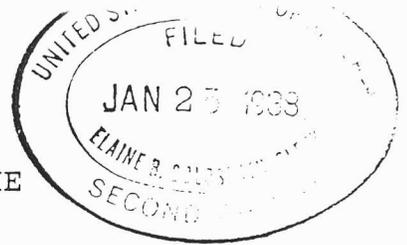
Based on the judge's physician's representations, coupled with the judge's assurance that he will follow the physician's advice and his recent record of service to the Court, we conclude that it is unlikely that the conduct leading to this complaint will recur.

Accordingly, while the behavior is not condoned, the Judicial Council concludes that appropriate corrective action has been taken and the proceeding is concluded. 28 U.S.C. §§ 372(c)(6)(B) and 372(c)(3)(B).

So Ordered.

  
Steven Flanders, Secretary  
of the Judicial Council

Dated: November 9, 1990  
New York, New York



JUDICIAL COUNCIL OF THE  
SECOND CIRCUIT

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In re  
CHARGE OF JUDICIAL MISCONDUCT

No. 87-8518  
Memorandum and Order

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Before: Chief Judge Wilfred Feinberg  
Circuit Judges James L. Oakes  
Thomas J. Meskill  
Jon O. Newman  
Amalya L. Kearse  
Richard J. Cardamone  
Lawrence W. Pierce  
Ralph K. Winter  
George C. Pratt  
Roger J. Miner  
Frank X. Altimari  
J. Daniel Mahoney  
Chief Judges Charles L. Brieant  
Jack B. Weinstein  
John T. Curtin  
Albert W. Coffrin  
T. F. Gilroy Daly  
Judge Neal P. McCurn

A complainant filed on October 26, 1987 a complaint pursuant to 28 U.S.C. § 372(c) and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the Local Rules), making numerous allegations of improper conduct against a bankruptcy judge in this circuit. The initial complaint consisted of the complaint form adopted pursuant to the Local Rules, a five-page typed statement of facts, dated October 23, 1987, and several exhibits.

By order dated December 23, 1987, Chief Judge Wilfred Feinberg appointed a Special Committee pursuant to 28 U.S.C. § 372(c)(4) and Local Rule 9, and notified both the complainant and the judge of its formation. In addition to himself, the committee includes Circuit Judges Jon O. Newman and George C. Pratt, and Southern District of New York Judges Robert J. Ward and John F. Keenan. Southern District of New York Chief Bankruptcy Judge Burton R. Lifland was appointed in a non-voting advisory capacity, pursuant to Local Rule 9(c), in light of the fact that the complaint concerns a bankruptcy judge.

The Judicial Council of the Second Circuit has received a comprehensive written report from the above Special Committee, which report was based upon a thorough examination of relevant papers, a letter response and exhibits submitted by the judge, written argument submitted by complainant, and the testimony of the judge, the complainant and one of the judge's law clerks, taken at a hearing held before the Special Committee on January 14, 1988. The judge was represented by counsel at the hearing.

Complainant alleges that:

- 1) The judge violated his Sixth Amendment rights under the United States Constitution when the judge declined to order certain actions that the complainant had requested and directed that certain papers submitted by complainant be returned to him;
- 2) The judge admonished complainant for submitting orders to show cause on April 7, 1987 and September 10, 1987, and in connection with the September 10 order to show cause, held an in-chambers conference during the course of which he "threatened" complainant and informed complainant that he would put him on the stand and that if complainant could not produce proof of his allegations he "would have a problem;"
- 3) The judge is prejudiced against complainant as demonstrated by the judge's conduct and rulings at a hearing held September 15, 1987 on an order to show cause submitted by complainant on September 10, 1987, including, inter alia, issuing an order sealing the order to show cause, refusing to listen to complainant's allegations of bankruptcy fraud and criminal activity, labeling complainant's conduct as interference, and appointing the trustee to act as his own attorney;
- 4) The judge became a litigant and an adversary in the proceeding following complainant's submission of an order to show cause seeking the judge's recusal;
- 5) The judge ordered an evidentiary hearing where he improperly questioned complainant for several hours, and;

- 6) The judge violated complainant's constitutional right to due process of law by failing to hold evidentiary hearings (except the one described above), by refusing complainant's request for discovery, and by not adequately investigating allegations of bankruptcy fraud.

The Council agrees with the conclusions reached by the Special Committee that most of the complainant's allegations relate to the merits of the bankruptcy proceeding and should be dismissed pursuant to 28 U.S.C. § 372(c)(6)(B) and Local Rule 14(c)(2). Though some of these allegations accuse the judge of not adequately investigating bankruptcy fraud and other serious misconduct, upon examination it is clear that the complainant is in substance challenging the correctness of rulings made by the judge in the course of the bankruptcy proceeding, and that there is no evidence that these rulings show wrongdoing on the part of the judge. With regard to the remaining allegations, the Council also agrees that, upon inquiry, the judge's actions were not shown to amount to judicial misconduct.

Accordingly, the complaint is dismissed.

So Ordered.

  
Steven Flanders, Secretary  
of the Judicial Council

Dated: January 25, 1988  
New York, New York

JUDICIAL COUNCIL OF  
SECOND CIRCUIT



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In re Norman M. Mendelson  
CHARGE OF JUDICIAL MISCONDUCT

No. 84-8527

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Before: Chief Judge Wilfred Feinberg  
Circuit Judges Irving R. Kaufman  
James L. Oakes  
Ellsworth A. VanGraafeiland  
Thomas J. Meskill  
Jon O. Newman  
Amalya L. Kearse  
Richard J. Cardamone  
Lawrence W. Pierce  
Ralph K. Winter  
George C. Pratt  
Chief Judges Constance Baker Motley  
John T. Curtin  
Albert W. Coffrin  
Howard G. Munson  
T. F. Gilroy Daly

Norman M. Mendelson filed on July 10, 1984 a complaint pursuant to 28 U.S.C. § 372(c) and Local Rule § 0.24, making numerous allegations of improper conduct against Bankruptcy Judge C. Albert Parente of the Eastern District of New York. The initial complaint of 23 pages, including 68 numbered paragraphs, was followed by a one-word correction filed July 12, and substantial supplements filed July 24, October 5, and December 3, 1984, some of which included substantial attachments and exhibits. Mr. Mendelson had attempted an earlier filing, dated June 1, 1984, which was returned by the circuit executive because it did not comply with Local Rule § 0.24.

By order dated July 31, 1984, Chief Judge Wilfred Feinberg appointed a Special Committee pursuant to 28 U.S.C. § 372(c)(4) and Local Rule § 0.24(c), and notified both the complainant and the judge of its formation. In addition to himself, the committee includes Circuit Judges Walter R. Mansfield and Ellsworth A. VanGraafeiland, Southern District of New York Judge Edward Weinfeld, and Eastern District of New York Judge Eugene H. Nickerson. Southern District of New York Bankruptcy Judge Prudence B. Abram was appointed in a non-voting advisory capacity in light of the fact that the complaint concerns a bankruptcy judge.

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The Judicial Council of the Second Circuit has received a comprehensive written report from the above Special Committee, which report was based upon a thorough examination of relevant papers in each matter mentioned in the complaint, and of the exhaustive responses submitted by Judge Parente.

The Council finds the matters raised by Mr. Mendelson to be without merit. The complaint, including all of the charges therein, is accordingly dismissed.

The several documents and allegations in this complaint are extremely lengthy and at many points poorly drafted, so it is impractical to attempt to treat each issue individually. In condensed form, the specific allegations, and their dispositions, are as follows.

Mr. Mendelson alleges that

- 1) Judge Parente "has become an advocate instead of an impartial trier of facts" and that he continues to "unjustly malign the character and competence of counsel without any support thereof in fact or law;"
- 2) Judge Parente has intervened on numerous occasions in litigation, in order to harass Mendelson and other lawyers for personal reasons; and
- 3) Judge Parente has engaged in nepotism and favoritism, both in appointments to salaried positions and in appointments to trusteeships and similar jobs.

Mr. Mendelson's numerous claims that Judge Parente has taken the part of one side, or has engaged in harassment, are dismissed because, in every instance, we find that there was a reasonable basis for the judge's actions. Complainant's characterizations of the events complained of proved upon examination of the transcripts and decisions to be incorrect, incomplete, or misleading. In no instance are we able to discern a basis to proceed against Judge Parente under 28 U.S.C. § 372(c). While we find that the judge's treatment of complainant might have been questionable under other circumstances, it appears that this behavior followed provocation that renders understandable the judge's behavior and actions.

In addition, judicial remedies were available for many of the actions protested by Mr. Mendelson, and he did, in numerous instances, seek appellate relief. Accordingly, the complaint raises matters "directly related to the merits of decision or procedural ruling." 28 U.S.C. § 372(c)(3)(ii). The language in the Act applies not only to questions that have been adjudicated but also to those that might appropriately be submitted for adjudication through normal litigation procedure. If what is sought is appropriately obtained by normal adjudication rather

than by a misconduct complaint, see In re Charge of Judicial Misconduct, 685 F.2d 1226 (9th Cir. 1982), such a matter falls within clause (ii) of § 372(c)(3)(A), whether or not it has already been the subject of a judicial ruling. The procedures of the Act were not meant to apply to conduct that can be redressed through legal proceedings unless the conduct alleged is egregious or presents a pattern clearly prejudicial to the administration of justice, see In re Charge of Judicial Misconduct, 593 F.2d 879, 881 (9th Cir. 1979), which is not the case here.

Mr. Mendelson's claims concerning alleged improprieties in various appointments to salaried and other positions also provide no basis to proceed against Judge Parente. We find that all the appointments referred to were adequately advertised, and the appointive power adequately shared among bankruptcy judges of the district. There is also no evidence that the judge knew in advance, or in any way approved of, the employment of his daughter in a clerical position, for a few months, by one of the standing trustees, who was associated with Judge Parente's son. Judge Parente states that, on the contrary, he did not know in advance of the employment and that upon learning of it he requested that it be terminated, which was done. We find no evidence of any improper bargain, or benefit to Judge Parente, in any of the above matters.

Mr. Mendelson's repeated objections that Judge Parente should have recused himself from Mendelson's cases are subject to ordinary appellate remedies, and not ordinarily appropriate for complaints under 28 U.S.C. § 372(c), as already indicated.

The complaint is hereby dismissed, for the reasons stated above.

So ordered.

  
Steven Flanders, Circuit Executive  
For the Judicial Council

Dated: April 15, 1985  
New York, New York

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HEAD - JUDICIAL COUNCIL  
AND CHIEF JUDGE OR

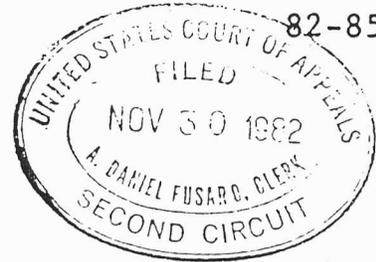
Judicial Council of the Second Circuit

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In re

Charge of Judicial Misconduct

-----X



Before the Judicial Council of the Second Circuit:

A complaint filed on October 12, 1982 alleging misconduct on the part of a chief judge of a district court having been dismissed on November 3, 1982 by the chief judge of the circuit, and a petition for review having been filed on November 17, 1982,

Upon consideration thereof, it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated November 3, 1982.

The Clerk is directed to transmit copies of this order to the complainant and to the judge whose conduct is the subject of the underlying complaint.

EXHIBIT A 3

Steven Flanders  
Steven Flanders, Secretary  
By Direction of the Judicial Council

JUDICIAL COUNCIL

for the

SECOND CIRCUIT

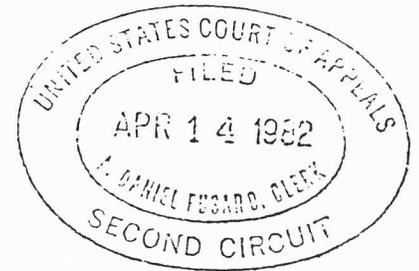
In Re

No. 81-8500

CHARGE OF JUDICIAL MISCONDUCT

PRESENT:

HON. IRVING R. KAUFMAN  
HON. ELLSWORTH A. VAN GRAAFEILAND  
HON. THOMAS J. MESKILL  
HON. JON O. NEWMAN  
HON. AMALYA L. KEARSE  
HON. LLOYD E. MAC MAHON  
HON. JACK B. WEINSTEIN  
HON. JOHN T. CURTIN  
HON. EMMET T. CLARIE



By petition dated January 21, 1982, Thomas C. Murphy has requested the Judicial Council of the Second Circuit to review an order of Chief Judge Wilfred Feinberg, dated January 7, 1982, which dismissed petitioner's charges of wrongdoing against seven Circuit Judges and one District Judge. The matter has been reviewed by those members of the Council who are not disqualified or have not recused themselves from participating in the review. We conclude that Chief Judge Feinberg correctly dismissed petitioner's complaint, and we approve and affirm Chief Judge Feinberg's order of January 7, 1982 for the reasons set forth therein.

EXHIBIT No 6. —————→ Pg ①

In his petition to the Council, petitioner states that he is amending his complaint to include a complaint against Chief Judge Feinberg personally. He charges first that Judge Feinberg was scheduled to sit with Judges Lumbard and Mansfield on September 13, 1979 to hear an appeal in the case of Doe v. Anker, No. 7299, but withdrew and was replaced by Judge Gurfein. The Clerk's records do not indicate that Judge Feinberg was scheduled to sit on September 13, 1979, and there is no indication that he disqualified himself or in any other manner withdrew from so sitting. Moreover, petitioner's complaint is completely devoid of any factual allegations indicating that withdrawal by Judge Feinberg, had it occurred, would have involved any wrongdoing whatever on his part.

Petitioner's second charge against Chief Judge Feinberg involves a letter allegedly delivered to Judge Feinberg's chambers in August, 1979. Petitioner has been requested to furnish the Council with a copy of this letter but states that he cannot locate it. Chief Judge Feinberg's office files contain no letter which meets petitioner's vague description; general correspondence relating to pending appeals is routinely placed in the appeal file maintained in the Clerk's office. Petitioner alleges "Feinberg did not publish my letter to him describing Sandner's dismissal of Weber, thereby suppressing evidence to obstruct justice." Petitioner has furnished neither facts nor law, and we are aware of none, which required Chief Judge Feinberg to publish any letter received from petitioner.

We find both charges against Chief Judge Feinberg to be completely without merit and frivolous, and they are dismissed.

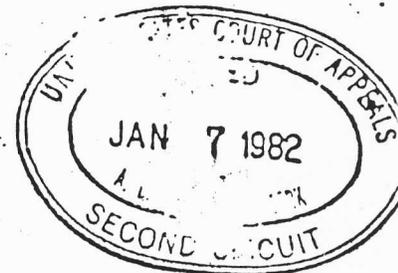
The Clerk is directed to transmit copies of this order to the complainant and the judges whose conduct is the subject of the complaint.

  
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Steven Flanders, Secretary,  
By Direction of the Judicial Council

DATE: April 14, 1982

RECEIVED  
JAN 7 1982  
CHIEF JUDGE  
ORDERS

for the  
SECOND CIRCUIT



-----X

In Re CHARGE OF  
JUDICIAL MISCONDUCT

No. 81-8500

-----X

WILFRED FEINBERG, Chief Judge:

A complaint containing six allegations of misconduct involving a total of seven circuit judges and one district judge of this circuit has been filed with the Clerk pursuant to 28 U.S.C. § 372 and Local Rule § 0.24. After carefully reviewing the matters alleged therein, I hereby order that the complaint be and it hereby is dismissed, for the reasons that appear below.

In four of his allegations, complainant charges various judges with conspiracy and obstruction of justice "in relation to various actions in a pattern of misconduct to suppress dissent through condonation and abetment of psychiatric abuse by municipal employers." All of these allegations are directly related to the merits of a judge's decision or ruling, and are therefore dismissed pursuant to 28 U.S.C. § 372(c)(3)(A)(11).

Complainant also charges two judges with intent to participate in the above-mentioned conspiracy. Complainant offers no further evidence to support his claim of conspiracy or his claim that by failing to respond to a letter in which complainant had requested each judge's position on a particular issue, that is, "the Second Circuit's psychia-

WILFRED FEINBERG, Chief Judge:

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Complainant also charges two judges with intent to participate in the above-mentioned conspiracy. Complainant offers no further evidence to support his claim of conspiracy or his claim that by failing to respond to a letter in which complainant had requested each judge's position on a particular issue, that is, "the Second Circuit's psychiatric racketeering," the judges in question had demonstrated their intent to participate in a conspiracy involving that issue. This allegation is frivolous and is dismissed under 28 U.S.C. § 372(c)(3)(A)(11).

Finally, complainant charges a judge with creating an appearance of impropriety by hearing a particular case. No party to the case requested the judge's recusal.

However, any judge must determine in every case in which he sits whether he is qualified to hear a matter, in light of pertinent statutory and ethical constraints. Thus, when a judge hears a case, he has made a decision not to recuse himself so that a complaint based upon his failure to do so ordinarily is properly regarded as directly related to the merits of a procedural ruling and therefore dismissible under 28 U.S.C. § 372(c)(3)(A)(11). In any event, a careful review of the complaint in this case reveals no basis to believe that the judge's decision to hear the matter could be an appropriate occasion for any form of discipline. Accordingly, this portion of the complaint is dismissed on two grounds: as directly related to the merits of a ruling, pursuant to 28 U.S.C. § 372(c)(3)(A)(11), and as frivolous under 28 U.S.C. § 372(c)(3)(A)(11).

It is further ordered that the Clerk be and he hereby is directed to transmit copies of this order to the complainant and to the eight judges whose conduct is the subject of the complaint.

  
WILFRED FEINBERG  
Chief Judge

Dated: January 7, 1982